

ASSEMBLY BILL

No. 1068

Introduced by Assembly Member Bloom

February 22, 2013

An act to amend Section 49076 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, as introduced, Bloom. Pupil records.

Existing law prohibits a school district from permitting access to pupil records to any person without parental consent or without a judicial order, except to specified persons under certain circumstances, including to a pupil 16 years of age or older or who has completed grade 10.

This bill would additionally permit access to a minor who is 15 years of age or older if the minor meets certain requirements, including that he or she is living separate and apart from his or her parent or guardian, and is managing his or her own financial affairs. By imposing additional duties on school districts, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 49076 of the Education Code is amended to read:

49076. (a) A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

(1) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(A) School officials and employees of the school district, members of a school attendance review board appointed pursuant to Section 48321 who are authorized representatives of the school district, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(B) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(C) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and state and local educational authorities, or the United States Department of Education's Office for Civil Rights, if the information is necessary to audit or evaluate a state or federally supported education program, or in connection with the enforcement of, or compliance with, the federal legal requirements that relate to such a program. Records released pursuant to this section shall comply with the requirements of Section 99.35 of Title 34 of the Code of Federal Regulations.

(D) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted before November 19, 1974.

1 (E) Parents of a pupil 18 years of age or older who is a
2 dependent as defined in Section 152 of Title 26 of the United States
3 Code.

4 (F) A pupil 16 years of age or older or having completed the
5 10th grade who requests access.

6 (G) A district attorney who is participating in or conducting a
7 truancy mediation program pursuant to Section 48263.5, or Section
8 601.3 of the Welfare and Institutions Code, or participating in the
9 presentation of evidence in a truancy petition pursuant to Section
10 681 of the Welfare and Institutions Code.

11 (H) A district attorney's office for consideration against a parent
12 or guardian for failure to comply with the Compulsory Education
13 Law (Chapter 2 (commencing with Section 48200)) or with
14 Compulsory Continuation Education (Chapter 3 (commencing
15 with Section 48400)).

16 (I) (i) A probation officer, district attorney, or counsel of record
17 for a minor for purposes of conducting a criminal investigation or
18 an investigation in regards to declaring a person a ward of the court
19 or involving a violation of a condition of probation.

20 (ii) For purposes of this subparagraph, a probation officer,
21 district attorney, and counsel of record for a minor shall be deemed
22 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
23 34 of the Code of Federal Regulations.

24 (iii) Pupil records obtained pursuant to this subparagraph shall
25 be subject to the evidentiary rules described in Section 701 of the
26 Welfare and Institutions Code.

27 (J) A judge or probation officer for the purpose of conducting
28 a truancy mediation program for a pupil, or for purposes of
29 presenting evidence in a truancy petition pursuant to Section 681
30 of the Welfare and Institutions Code. The judge or probation officer
31 shall certify in writing to the school district that the information
32 will be used only for truancy purposes. A school district releasing
33 pupil information to a judge or probation officer pursuant to this
34 subparagraph shall inform, or provide written notification to, the
35 parent or guardian of the pupil within 24 hours of the release of
36 the information.

37 (K) A county placing agency when acting as an authorized
38 representative of a state or local educational agency pursuant to
39 subparagraph (C). School districts, county offices of education,
40 and county placing agencies may develop cooperative agreements

1 to facilitate confidential access to and exchange of the pupil
2 information by email, facsimile, electronic format, or other secure
3 means, provided the agreement complies with the requirements
4 set forth in Section 99.35 of Title 34 of the Code of Federal
5 Regulations.

6 *(L) A minor 15 years of age or older who meets both of the*
7 *following requirements:*

8 *(i) The minor is living separate and apart from his or her parents*
9 *or guardian, whether it is with or without the consent of a parent*
10 *or guardian, and regardless of the duration of the separation.*

11 *(ii) The minor is managing his or her own financial affairs,*
12 *regardless of the minor's source of income.*

13 (2) School districts may release information from pupil records
14 to the following:

15 (A) Appropriate persons in connection with an emergency if
16 the knowledge of the information is necessary to protect the health
17 or safety of a pupil or other persons. Schools or school districts
18 releasing information pursuant to this section shall comply with
19 the requirements set forth in Section 99.32(a)(5) of Title 34 of the
20 Code of Federal Regulations.

21 (B) Agencies or organizations in connection with the application
22 of a pupil for, or receipt of, financial aid. However, information
23 permitting the personal identification of a pupil or his or her parents
24 may be disclosed only as may be necessary for purposes as to
25 determine the eligibility of the pupil for financial aid, to determine
26 the amount of the financial aid, to determine the conditions which
27 will be imposed regarding the financial aid, or to enforce the terms
28 or conditions of the financial aid.

29 (C) Pursuant to Section 99.37 of Title 34 of the Code of Federal
30 Regulations, a county elections official, for the purpose of
31 identifying pupils eligible to register to vote, or for conducting
32 programs to offer pupils an opportunity to register to vote. The
33 information shall not be used for any other purpose or given or
34 transferred to any other person or agency.

35 (D) Accrediting associations in order to carry out their
36 accrediting functions.

37 (E) Organizations conducting studies for, or on behalf of,
38 educational agencies or institutions for the purpose of developing,
39 validating, or administering predictive tests, administering student
40 aid programs, and improving instruction, if the studies are

1 conducted in a manner that will not permit the personal
2 identification of pupils or their parents by persons other than
3 representatives of the organizations, the information will be
4 destroyed when no longer needed for the purpose for which it is
5 obtained, and the organization enters into a written agreement with
6 the educational agency or institution that complies with Section
7 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

8 (F) Officials and employees of private schools or school systems
9 where the pupil is enrolled or intends to enroll, subject to the rights
10 of parents as provided in Section 49068 and in compliance with
11 the requirements in Section 99.34 of Title 34 of the Code of Federal
12 Regulations. This information shall be in addition to the pupil's
13 permanent record transferred pursuant to Section 49068.

14 (G) (i) A contractor or consultant with a legitimate educational
15 interest who has a formal written agreement or contract with the
16 school district regarding the provision of outsourced institutional
17 services or functions by the contractor or consultant.

18 (ii) Notwithstanding Section 99.31(a)(1)(i)(B) of Title 34 of the
19 Code of Federal Regulations, a disclosure pursuant to this
20 paragraph shall not be permitted to a volunteer or other party.

21 (3) A person, persons, agency, or organization permitted access
22 to pupil records pursuant to this section shall not permit access to
23 any information obtained from those records by another person,
24 persons, agency, or organization, except for allowable exceptions
25 contained within the federal Family Educational Rights and Privacy
26 Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the
27 written consent of the pupil's parent. This paragraph does not
28 require prior parental consent when information obtained pursuant
29 to this section is shared with other persons within the educational
30 institution, agency, or organization obtaining access, so long as
31 those persons have a legitimate educational interest in the
32 information pursuant to Section 99.31(a)(1)(i)(A) of Title 34 of
33 the Code of Federal Regulations.

34 (4) Notwithstanding any other provision of law, a school district,
35 including a county office of education or county superintendent
36 of schools, may participate in an interagency data information
37 system that permits access to a computerized database system
38 within and between governmental agencies or school districts as
39 to information or records that are nonprivileged, and where release

1 is authorized as to the requesting agency under state or federal law
2 or regulation, if each of the following requirements ~~are~~ *is* met:

3 (A) Each agency and school district shall develop security
4 procedures or devices by which unauthorized personnel cannot
5 access data contained in the system.

6 (B) Each agency and school district shall develop procedures
7 or devices to secure privileged or confidential data from
8 unauthorized disclosure.

9 (C) Each school district shall comply with the access log
10 requirements of Section 49064.

11 (D) The right of access granted shall not include the right to
12 add, delete, or alter data without the written permission of the
13 agency holding the data.

14 (E) An agency or school district shall not make public or
15 otherwise release information on an individual contained in the
16 database if the information is protected from disclosure or release
17 as to the requesting agency by state or federal law or regulation.

18 (b) The officials and authorities to whom pupil records are
19 disclosed pursuant to subdivision ~~(f)~~ *(e)* of Section 48902 and
20 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
21 in writing to the disclosing school district that the information
22 shall not be disclosed to another party, except as provided under
23 the federal Family Educational Rights and Privacy Act of 2001
24 (20 U.S.C. Sec. 1232g) and state law, without the prior written
25 consent of the parent of the pupil or the person identified as the
26 holder of the pupil's educational rights.

27 (c) (1) Any person or party who is not permitted access to pupil
28 records pursuant to subdivision (a) or (b) may request access to
29 pupil records as provided for in paragraph (2).

30 (2) A local educational agency or other person or party who has
31 received pupil records, or information from pupil records, may
32 release the records or information to a person or party identified
33 in paragraph (1) without the consent of the pupil's parent or
34 guardian pursuant to Section 99.31(b) of Title 34 of the Code of
35 Federal Regulations, if the records or information are deidentified,
36 which requires the removal of all personally identifiable
37 information, provided that the disclosing local educational agency
38 or other person or party has made a reasonable determination that
39 a pupil's identity is not personally identifiable, whether through

1 single or multiple releases, and has taken into account other
2 pertinent reasonably available information.

3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

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